

## **SECTION 8: PROSECUTION AND PROGRESS**

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**8-01 SUBCONTRACTING.** No subcontractor will be recognized as such, and all persons engaged in the Work of construction will be considered as employees of the Contractor, and the Contractor will be held responsible for their subcontractors' work, which shall be subject to the provisions of the Contract Documents.

The Contractor shall give Contractor's personal attention to the fulfillment of the Contract and shall keep the Work under Contractor's control. The Contractor shall perform with Contractor's own organization that portion of the work generally required to comply with the California Contractors State License Board Regulations and as specified in the Special Provisions, except for any designated "Specialty Items" that may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the Contractor with Contractor's own organization. When items of Work in the Engineer's Estimate are preceded by the letter (S), said items are designated "Specialty Items." Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. The value of the Work subcontracted shall be determined by multiplying the number of units subcontracted of any contract item by the unit price as set forth in the Contract. If any subdivision of a contract unit is subcontracted, the entire unit shall be considered as subcontracted.

Before any work is started on a subcontract, the Contractor shall file with the Engineer at Engineer's office, 500 Castro Street, Mountain View, California, a written statement on a form provided by the City showing the Work to be subcontracted, giving the names of the subcontractors and the description of each portion of the Work to be so subcontracted.

Where a portion of the Work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City, the subcontractor shall be removed immediately on the written direction of the Engineer and shall not again be employed on the Work.

The roadside production of materials produced by other than the Contractor's forces shall be considered as subcontracted. Roadside production materials shall be construed to be production of crushed stone; asphalt or oil mixtures; gravel or sand; Portland cement concrete; asphalt concrete; and crusher run base with portable, semi-portable or temporary crushing or screening; proportioning; and mixing plants established or reopened for the purpose of supplying local aggregate or material for a particular project or projects.

**8-02 ASSIGNMENT.** The performance of the Contract may not be assigned, except upon the written consent of the City. Consent will not be given to any proposed assignment which would relieve the original Contractor or Contractor's surety of their responsibilities under the Contract, nor will the City consent to any assignment of a part of the Work under Contract.

The Contractor may assign moneys due or to become due him under the Contract, and the same will be recognized by the City if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper withholdings in favor of the City and to all deductions provided for in the Contract, and particularly all moneys withheld, whether assigned or not, shall be subject to being used by the City for the completion of the Work in the event that the Contractor should be in default therein.

**8-03 PROGRESS OF THE WORK.** The Contractor shall begin Work in accordance with the Notice to Proceed or within fifteen (15) days following the execution of the Contract by the City, and shall diligently prosecute the same to completion within the time limits provided in the Contract Documents.

Should the Contractor begin work in advance of receiving notice that the Contract has been approved as above provided, any work performed by Contractor in advance of the said date of approval shall be considered as having been done by Contractor at Contractor's own risk and as a volunteer unless said Contract is so approved.

Time is of the essence of this agreement. If the Contractor should fail to supply sufficient workers, material, supplies and equipment, the City shall give written notice to the Contractor, which notice shall require that the Contractor supply sufficient workers, supplies, materials and equipment to diligently prosecute the project. If the Contractor fails to begin or resume diligent prosecution of the Work within forty-eight (48) hours after such notice is delivered, the owner may eject the Contractor from the job, take over all supplies, equipment and material of the Contractor on the job site and either obtain another Contractor to finish the project or finish the project with Contractor's own forces. In such event, the Contractor shall be liable to the City for any damages incurred including, but not limited to, the full cost of completing the project.

**8-04 CHARACTER OF WORKERS.** If any subcontractor or person employed by the Contractor shall fail or refuse to carry out the directions of the Engineer or shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, he shall be discharged immediately on the written direction of the Engineer, and such person shall not again be employed on the Work.

**8-05 TEMPORARY SUSPENSION OF WORK.** The Engineer shall have the authority to suspend the Work wholly or in part, for such period as he/she may deem

necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the Work, or for such time as he/she may deem necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the Contract. The Contractor shall immediately comply with the written order of the Engineer to suspend the Work wholly or in part. The Work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the Engineer.

In the event that a suspension of the Work is ordered as provided above, and should such suspension be ordered by reason of the failure of the Contractor to carry out orders given, or to perform any provision of the Contract; or, by reason of weather conditions being unsuitable for performing an item or items of Work, which Work could, in the sole opinion of the Engineer, have been performed prior to the occurrence of such unsuitable weather conditions had the Contractor diligently prosecuted the Work when weather conditions were suitable; the Contractor shall, at Contractor's own expense, do all the Work necessary to provide a safe, smooth and unobstructed passageway through the Work for use by public traffic during the period of such suspension, as specified in Paragraphs 7-04, "Public Convenience," and 7-05, "Public Safety," of these Standard Provisions, and as specified in the Special Provisions for the Work. In the event that the Contractor fails to perform the Work specified above, the City will perform such work and the cost thereof will be deducted from progress estimates due the Contractor.

In case of a suspension of the Work, as above provided, attention is directed to the requirements of Paragraph 7-10, "Contractor's Responsibility for Work," of these Standard Provisions.

**8-06 TIME OF COMPLETION AND LIQUIDATED DAMAGES.** The Contractor shall complete the Work called for under the Contract in all parts and requirements within the number of working days, calendar days or by the date specified in the Contract Documents.

A working day is hereby defined as any day, except Saturdays, Sundays, and legal holidays and days on which the Contractor is specifically required by the Special Provisions to suspend construction operations, on which the Contractor is not prevented by inclement weather or conditions resulting immediately therefrom adverse to the current controlling operation or operations, as determined by the Engineer, from proceeding with at least sixty percent (60%) of the normal labor and equipment force engaged on such operation or operations for at least five (5) hours toward completion of such operation or operations. This definition is applicable to projects which have a construction period specified on a working day basis and does not apply to construction periods specified on a calendar day basis.

The terms "day" and "calendar day" are defined as every twenty-four (24) hour period from midnight to midnight, including Saturdays, Sundays and holidays.

It is agreed by the parties to the Contract that in case all work called for under the Contract in all parts and requirements is not finished or completed within the number of working days, calendar days or by the date specified as set forth in the Contract Documents, damage will be sustained by the City, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the City the sum of Five Hundred Dollars (\$500) per day for each and every calendar day's delay in finishing the work in excess of the number of working days, or calendar days prescribed or in excess of the date specified for completion of the Work, whichever is applicable in the Contract Documents; and the Contractor agrees to pay said liquidated damages as herein provided; and in case the same are not paid, agrees that the City may deduct the amount thereof from any moneys due or that may become due the Contractor under the Contract.

Partial payments paid to the Contractor after the scheduled completion dates shall not be constituted as a waiver of the City's right to assess liquidated damages.

It is further agreed that in case the Work called for under the Contract is not finished and completed in all parts and requirements within the number of working days, calendar days or by the date specified as set forth in the Contract Documents, the Engineer shall have the right to increase the number of working days/calendar days or not, as may seem best to serve the interest of the City, and if he/she decides to increase the said number of working days/calendar days, he/she shall further have the right to charge to the Contractor, Contractor's heirs, assigns and sureties and to deduct from final payment for the Work, all or any part, as he/she may deem proper, of the actual cost of engineering, inspection, superintendence, and other expenses which are directly chargeable to the contract, and which accrue during the period of such extension, except that cost of final surveys and preparation of final estimate shall not be included in such charges.

The Contractor shall not be assessed with liquidated damages nor the cost of engineering and inspection during any delay beyond the time named for completion of the Work caused by acts of God or of the public enemy, acts of the State, fire, floods, epidemics, quarantine restrictions, strikes and freight embargoes, or delays of subcontractors due to such causes; provided that the Contractor shall notify the Engineer in writing of the causes of delay within ten (10) days from the beginning of any such delay, and the Engineer shall ascertain the facts and the extent of the delay, and Engineer's findings of the facts thereon shall be final and conclusive.

If the Contractor is delayed by reason of alterations made under Paragraph 4-02, "Alterations," of these Standard Provisions, or by any act of the Engineer or of the City, not contemplated by the Contract, the time of completion shall be extended proportionately and the Contractor shall be relieved, during the period of

such extension, of any claim for liquidated damages, engineering or inspection charges or other penalties. The Contractor shall have no claim for any other compensation for any such delay.

**8-07 TERMINATION OF CONTRACT.** The City reserves the right to terminate the Contract for its convenience in accordance with Section 8-1.11, "Termination of Contract," of the Standard Specifications, at any time upon a determination by the City Council or designated representative that termination of the Contract is in the best interests of the City.

Failure to maintain a superintendent on the site as required in Paragraph 5-07, "Superintendence," in these Standard Provisions at all times when construction work is in progress shall be construed as a failure to diligently prosecute the Work. Failure to adequately staff the project or failure to prosecute the Work for more than ninety-six (96) consecutive hours will constitute abandonment of the project by the Contractor and may be grounds for termination of the Contract.

Failure to supply an adequate working force, or material of proper quality, or failure to comply with Section 10262 of the State Contract Act, or in any other respect to prosecute the Work with the diligence and force specified by the Contract, is grounds for termination of the Contractor's control over the Work and for taking over the Work by the City in accordance with Section 8-1.08, "Termination of Control," of the Standard Specifications, with the exception that any disputes concerning the amount to be paid by the City to the Contractor or Contractor's surety or to be paid to the City by the Contractor or Contractor's surety shall NOT be subject to arbitration. The last paragraph in Section 8-1.08, "Termination of Control," of the Standard Specifications, which refers to arbitration, and Section 9-1.10, "Arbitration," shall not apply.

**8-08 PROGRESS SCHEDULE.** After the award of contract, the successful Bidder shall submit a progress schedule. The Bidder shall show thereon the time Bidder proposes to occupy in prosecuting the various major divisions of the Work and Bidder's proposed sequence of operations. The progress schedule will be submitted prior to the Contractor starting work and shall be prepared as a "Critical Path" diagram when required by the Engineer. The progress schedule shall include all major items of Work and their start and stop dates.